

Remarks

The Applicants thank Examiner Chawla and her SPE for the Examiner interview held on December 16, 2008.

Claims 1-14 and 16-27 were pending. Claim 1 has been amended to further define the emulsifier component. Support for the amendments can be found on page 13, Example 1, Table 1 in the preferred range column. The range for emulsifiers is obtained from the ranges of lecithin, sodium stearoyl lactylate, polysorbate 60 and polysorbate 80. Claim 8 has been amended to provide proper claim dependency. Claims 7 and 11-13 have been cancelled. Claims 16-27 have been withdrawn.

Claims Rejection - 35 USC 103

The Examiner has rejected claims 1-14 as being obvious over Lynch (U.S. Patent No. 6,203,841) - column 20, lines 25-45. The Applicants respectfully request reconsideration for the following reasons.

The Applicants respectfully submit that claim 1 as amended now recites an emulsifier in an amount of 0.15 to 0.41%, polysorbate 60 and polysorbate 80 in amounts of 0.02 to 0.05% each, lecithin in an amount of 0.06 to 0.2%, and sodium steroyl lactylate in an amount of 0.05 to 0.11%. These claims now define over Example 4, column 20 of Lynch et al. The whippable product of the present invention with its recited combination of ingredients including the emulsifiers, has the capability of inversion i.e., in the unwhipped form it is an oil in water emulsion, but when whipped with added sugar, it changes to a water-in-oil emulsion. This contributes to its good organoleptic properties, smooth and non-waxy mouth feel.

In the Office Action, the Examiner contends that it would have been obvious that the composition of Lynch would have similar properties upon whipping. The Applicants respectfully submit that because the composition of Lynch does not teach or disclose the types and amounts of emulsifiers required by the present claims, the product of Lynch is not expected to have similar properties upon whipping with added sugar. Additionally, the Applicants respectfully point out the 37 C.F.R. 1.132 Declaration filed on June 2, 2008 for evidence that the composition of column 20 of Lynch is not capable of inversion upon adding sugar.

In the Office Action, the Examiner relies on Petricca (U.S. Patent No. 4,107,343) for its teaching of Polysorbate 60 and Polysorbate 80. The Applicants respectfully submit that Petricca does not disclose the same emulsifier combination as required by the claims.


The Applicants respectfully submit that Lynch and Petricca do not teach that using the claimed combination of emulsifier will provide for inversion, nor do they teach that inversion is desirable. Thus one of ordinary skill would not have a reason to provide for the claimed emulsifier combination. As such, the Applicants respectfully submit that the present composition with the claimed emulsifier combination would not have been obvious to one of ordinary skill in the art. Thus, it is respectfully requested that the Examiner withdraw this rejection.

Conclusion

Based on the above amendments and arguments, Applicants believe that claims 1-6, 8-10, and 14 are now in a condition for allowance and thus respectfully request the Examiner to allow these claims.

This response is being filed with a Request for Continued Examination and a one-month request for extension along with the RCE fee and the late fee. If any additional fee is due, the Director is hereby authorized to charge it to Deposit Account 08-2442 of the undersigned.

Respectfully submitted,
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Dated: December 31, 2008